



महाराष्ट्र शासन राजपत्र

असाधारण भाग आठ

वर्ष २, अंक २५]

मंगळवार, एप्रिल १२ २०१६/चैत्र २३, शके १९३८

[पृष्ठे १०, किंमत : रुपये २७.००

असाधारण क्रमांक ३९

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधि व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (working therein) Bill, 2016 (L. C. Bill No. III of 2016), introduced in the Maharashtra Legislative Council on the 11th April 2016, is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

PRAKASH H. MALI,
Secretary (Legislation) to Government,
Law and Judiciary Department.

L. C. BILL No. III OF 2016.

A BILL

to provide for prohibition of obscene dance in hotels, restaurants, bar rooms and other establishments and to improve the conditions of work, protect the dignity and safety of women in such places with a view to prevent their exploitation.

WHEREAS it is expedient to provide for prohibition of obscene dance in hotels, restaurants, bar rooms and other establishments and to improve the conditions of work, and protect the dignity and safety of women in such places with a view to prevent their exploitation; it is hereby enacted in the Sixty-seventh Year of the Republic of India as follows :—

1. (1) This Act may be called the Maharashtra Prohibition of Short title,
Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of extent and
Dignity of Women (working therein) Act, 2016. commencement.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(1) “alcoholic beverage” means any potable beverage consisting of or containing liquor or an intoxicant ;

(2) “Appellate Committee” means the Committee consisting of the Additional Chief Secretary/Principal Secretary/Secretary (Appeals and Security), Home Department; Additional Chief Secretary/Principal Secretary/ Secretary of Women and Child Development Department and the Additional Director General of Police or his representative not below the rank of Inspector General of Police or concerned Commissioner of Police ;

(3) “bar room” means a place, to which the owner or proprietor admits the public and where dances are staged by or at the instance of the owner or proprietor of such establishment for the entertainment of customers ;

(4) “dancer” means any artist performing dance on the stage or in any part of the premises ;

(5) “establishment” means a shop, commercial establishment, bar room, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment, and includes such other establishment as the State Government may, by notification in the *Official Gazette*, declare to be an establishment for the purposes of this Act ;

(6) “hotel” or “restaurant” means any establishment where alcoholic beverages are sold for the profit or gain of the owner or proprietor for consumption by customers thereat ;

(7) “licensing authority” means the authority empowered for granting of licences under section 4 ;

(8) “obscene dance” means a dance that is obscene within the meaning of section 294 of the Indian Penal Code and any other law for the time being in force and shall include a dance,—

45 of
1860.

(i) which is designed only to arouse the prurient interest of the audience ; and

(ii) which consists of a sexual act, lascivious movements, gestures for the purpose of sexual propositioning or indicating the availability of sexual access to the dancer, or in the course of which, the dancer exposes his or her genitals or, if a female, is topless ;

(9) “owner” or “proprietor” means any person who owns or has the management, control or charge of the management of an establishment and includes an employer as defined under the Maharashtra Shops and Establishments Act ;

LXXIX of
1948.

(10) “place” includes a establishment house, building, tent and any means of transport whether by sea, land or air ;

(11) “prescribed” means prescribed by rules made under this Act.

3. No person shall start hotel, restaurant, bar room or any other place where dances are staged, without obtaining a licence under this Act and without complying with the conditions and restrictions imposed by the Act and the rules. Permission for hotel, restaurant and bar room.

4. (1) The following licensing authority shall have power to grant licences under this Act, namely :— Licensing Authority.

XXII of
1951.

(i) in Brihan Mumbai and other areas for which a Commissioner of Police is appointed under section 7 of the Maharashtra Police Act, the Commissioner of Police; and

(ii) in other areas, the Superintendent of Police of the respective district.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, by notification in the *Official Gazette*, appoint such other authorities as it may specify in the notification, to be the licensing authorities for the purposes of this Act.

5. The licensing authority shall not grant licence under this Act unless it is satisfied that,— Conditions for grant of licence.

(a) the conditions prescribed by this Act and the rules have been complied with by the applicant,

(b) adequate conditions of work and provisions for safety in respect of women employed in the hotel, restaurant or bar room as prescribed have been provided, and

(c) adequate precautions have been taken in the place, in respect of which the licence is to be given, to provide for the safety of the persons visiting such place.

6. (1) A person desirous to obtain the licence under this Act shall fulfil the eligibility criteria as prescribed and shall make an application complete in all respect in the format prescribed. Eligibility for licences.

(2) The licensing authority may, if it deems fit, grant the licence under this Act to such person, on payment of such fees and on such terms and conditions and subject to such restrictions as may be prescribed. The licensing authority may, after recording the reasons in writing, refuse to grant any such licence :

Provided that, the licensing authority shall take a decision on the application within a period of one month from the date of the receipt of application complete in all respect.

(3) The licence shall be issued to the eligible applicant in the format prescribed under the signature of licensing authority.

XXII of
1951.

(4) Notwithstanding anything contained in the Maharashtra Police Act, no licence shall be granted for Discotheque or Orchestra, in the place for which the licence under this Act is granted, nor a licence shall be granted under this Act for the place for which a licence for Discotheque or Orchestra has been granted.

Act in
addition to other
law and not in
derogation.

7. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law, for the time being in force.

Punishment
for offences.

8. (1) The owner or proprietor or manager or any person acting on his behalf, who uses the place in contravention of section 3 shall, on conviction, be punished with imprisonment for a term which may extend to five years or fine which may extend to rupees twenty-five lakhs, or with both; and in case of continuing offence, further fine of rupees twenty-five thousand for each day during which the offence continues.

(2) The owner or proprietor or manager or any person acting on his behalf, shall not allow any obscene dance or exploit any working woman for any immoral purpose in any place and the person committing such act shall, on conviction, be punished with imprisonment for a term which may extend to three years or a fine which may extend to rupees ten lakhs, or with both; and in case of continuing offence, further fine which may extend to rupees ten thousand for each day during which the offence continues.

(3) The offences under sub-sections (1) and (2) shall be cognizable and non-bailable and triable by a Judicial Magistrate of the First Class.

(4) No person shall throw or shower coins, currency notes or any article or anything which can be monetized on the stage or hand over personally or through any means coins, currency notes or any article or anything which can be monetized, to a dancer or misbehave or indecently behave with the working women or touch her person, in any place. Any person who commits such act or abets the commission of such acts shall, on conviction, be punished with imprisonment for a term which may extend to six months or a fine which may extend to rupees fifty thousand, or with both.

(5) The offence punishable under sub-section (4) shall be non-cognizable and bailable and triable by a Judicial Magistrate of the First Class.

(6) Any person who contravenes any of the provisions of this Act for which no other punishment has been provided, shall, on conviction, be punished with imprisonment for a term which may extend to three months or fine which may extend to rupees twenty-five thousand or, with both.

Power to
suspend,
revoke or
cancel licence.

9. (1) The licensee or any person acting on his behalf shall follow all the licence conditions prescribed throughout the licence period.

(2) In the event of any contravention by the licensee of any of the provision of this Act or the rules made thereunder, or of any of the condition or restriction subject to which the licence has been granted to him under this Act, or in the event of his conviction for an offence under this Act, the licensing authority may, by order, suspend, revoke or cancel the licence for such period as it may think fit :

Provided that, no such licence shall be suspended, revoked or cancelled unless, the holder thereof has been given a reasonable opportunity of being heard.

(3) In case the licensee commits the offences under this Act for three times, the licence shall be liable to be cancelled permanently.

10. (1) Any person aggrieved by an order of the licensing authority refusing to grant a licence under section 6, or suspension, revocation or cancellation of any licence under section 9, may appeal to the Appellate Committee, within such period as may be prescribed, and the Appellate Committee shall on such appeal, make such order as it thinks just and proper, within such period as may be prescribed. Appeal to Appellate Committee.

(2) The order passed under sub-section (1) shall be final.

11. The State Government may, either on its own motion or, upon an application made by an aggrieved person within such period as may be prescribed, call for and examine the record of any order made by the licensing authority under this Act and pass order thereon as it thinks just and proper : Revision.

Provided that, —

(i) when the application under this section is rejected by the State Government the reasons for such rejection shall be recorded; and

(ii) before any order is passed under this section, which is likely to affect any person, a reasonable opportunity of being heard shall be given to him :

Provided further that, where appeal is filed under section 10, no revision shall be entertained under this section.

12. (1) The State Government shall constitute a Grievance Redressal Committee to ensure that the conditions of service of women working in the hotel, restaurant, bar rooms and establishment to which the provisions of this Act apply are duly observed. The committee shall redress the grievances of such women in such manner as may be prescribed. Grievance redressal mechanism.

(2) The committee shall consists of such officers of the Government, not below the rank of Group-A Officers as may be prescribed.

(3) The manner in which such committee shall exercise its powers and discharge its functions shall be such as may be prescribed.

13. The State Government may, subject to such restrictions and conditions as it may impose, by notification in the *Official Gazette*, delegate to the Director General of Police, its powers under section 11. Delegation of powers.

14. (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act. Power to make rules.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of

the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the *Official Gazette*, the rule shall, from the date of publication of such notification in the *Official Gazette*, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

Power to
remove
difficulties.

15. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion arises, by an order published in the *Official Gazette*, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purpose of removing the difficulty :

Provided that, no such order shall be made under this sub-section after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

Deletion of
section 33A
of the
Maharashtra
Police Act.

16. Section 33A of the Maharashtra Police Act shall be deleted.

XXII of
1951.

STATEMENT OF OBJECTS AND REASONS.

The licenses for holding of dance performances for public amusement in eating houses, permit rooms and bars , where liquor is served for consumption thereat, were granted in accordance with the provisions of the rules framed under section 33 (1) of the Maharashtra Police Act (XXII of 1951).

2. It was observed that, in certain cases such dances were vulgar or obscene. It was also observed that, such dances were derogatory to the dignity of women and were likely to deprave, corrupt or injure public morality. It was also brought to the notice of the State Government that, the places where such dances were staged were used as places for immoral activities and also as a place for solicitation for the purpose of prostitution.

3. Therefore, the Bombay Police (Amendment) Act, 2005 (Mah. XXV of 2005), was enacted for prohibiting performance of dances in the eating houses, permit rooms and bars. However, certain classes of establishments such as theatres, clubs and hotels classified as three starred hotels were exempted from such provisions. Sections 33A and 33B were incorporated in the Maharashtra Police Act, for the said purpose.

4. The Bombay High Court by its judgment and order dated the 12th April 2006, passed in Writ Petition No. 2450 of 2005 (Indian Hotel and Restaurants Association Vs. The State of Maharashtra) observed that there was no nexus between the classification of the exempted category and the objects of the Act and that the restrictions on performance of dances in such establishments were discriminatory and unreasonable and struck down the said amendment Act.

5. The State of Maharashtra thereafter preferred an appeal being Civil Appeal No. 2705 of 2006 before the Supreme Court against the said judgment and order of the Bombay High Court, dated the 12th April 2006. The Supreme Court *vide* its judgment and order dated the 16th July 2013, reported in (2013) 8 SCC 519, upheld the judgment and order of the Bombay High Court. It was observed that, the restrictions in the nature of prohibition cannot be said to be reasonable. It was also observed that, there could be several lesser alternatives available to ensure safety of women than to completely prohibit dance.

6. Thereafter, the Maharashtra Police (Second Amendment) Act, 2014 (Mah. XV of 2014) was enacted with a view to substitute section 33A of the Police Act and to delete section 33B.

7. The Supreme Court in its order dated the 15th October 2015, observed that the provisions of section 33A has been incarnated in the same form or character.

8. The data so far collected reveals that the dance bars employ minor girls and that some of the girls and women employed therein are victims of the offences under the Immoral Traffic (Prevention) Act, 1956. The State Government is also conscious of and concerned with the unsafe and exploitative conditions in which such females work in bars either as waitresses, dancers or in any other capacity and the risks to which they are exposed to.

9. By the judgment and order dated the 16th July 2013, it was, *inter alia*, observed by the Supreme Court that the State of Maharashtra should re-examine the issue and consider the recommendations by the Committee Chaired by the Principal Secretary, Home Department, which consisted of the representations of the AHAR, Police and Public officials. The said recommendations are also taken into consideration.

10. After considering the report of the said Committee the Government of Maharashtra considers it expedient in the public interest to enact a special law to provide for prohibition of obscene dances. It is also proposed to regulate the performance of other dances in bars, hotels and restaurants so as to minimize the risk of such dances turning obscene without jeopardizing the right of dancers engaged in legitimate dancing to gainful employment. It is also considered expedient to make provisions to improve the conditions of work of females in such establishments and for ensuring their dignity, as also to prevent their exploitation.

11. The Bill seeks to achieve the above objectives.

Mumbai,

Dated the 11th April 2016.

Chief Minister.

MEMORANDUM REGARDING DELEGATED LEGISLATION.

The Bill involves the following proposals for delegation of legislative power, namely :—

Clause 1 (2). - Under this clause, power is taken to the State Government, to bring into force the provisions of the Act by notification in the *Official Gazette*.

Clause 2 (6).- Under this clause, power is taken to the State Government, to declare the other establishment, by notification in the *Official Gazette*, for the purposes of the Act.

Clause 4 (2).- Under this clause, the power is taken to the State Government, to appoint such other authorities as it may specify, by notification in the *Official Gazette*, to be the licensing authorities for the purposes of the Act.

Clause 5.- Under sub-clause (b), power is taken to the State Government, to prescribe by rules the adequate service conditions of work and provisions for safety of women in respect of women employed in the hotel, restaurant or bar room.

Clause 6.-(a) Under sub-clause (1), power is taken to the State Government, to prescribe the eligibility criteria and the format of application for license to be obtained under the Act ;

(b) under sub-clause (2), power is taken to the State Government, to prescribe the fee for licence and terms, condition and restriction for the license under the Act ;

(c) under sub-clause (3), power is taken to the State Government to prescribe the format in which the licensing authority shall issue the licence to the eligible applicant.

Clause 10.- Under this clause, the power is taken to the State Government to prescribe the period for filing the appeal to the Committee, the fee to be paid alongwith the appeal and the period for deciding of such appeal.

Clause 11.- Under this clause, the power is taken to the State Government to prescribe the period for calling and examining the record of any order made by a licensing authority.

Clause 12.- Under this clause, power is taken to the State Government to prescribe the composition of the Grievances Redressal Committee and the manner in which such committee shall exercise its powers and discharge its functions and the manner in which the committee shall redress the grievances of such women.

Clause 13.- Under this clause, the power is taken to the State Government to delegate its power to the Director General of Police subject to such restriction and conditions as it may imposed by notification in the *Official Gazette*.

Clause 14.- Under this clause, the power is taken to the State Government, to make the rules by notification in the *Official Gazette*, to carry out the purposes of the Act.

Clause 15.- Under this clause, the power is taken to the State Government, to remove, by an order published in the *Official Gazette*, any difficulty which may arise in giving effect to the provisions of this Act.

2. The above-mentioned proposals for delegation of legislative power are of normal character.